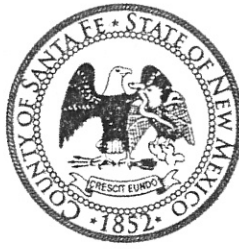


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Rudy N. Garcia
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

Date: March 26, 2019

To: Board of County Commissioners

From: Robert Griego, Planning Manager *RG*
Paul Olafson, Planning Projects Manager *PO*
Jacob Stock, Community Planner *JS*

Via: Katherine Miller, County Manager
Penny Ellis Green, Growth Management Director *PEG*

RE: **Ordinance 2019- __, An Ordinance Amending The Sustainable Land Development Code, Ordinance No. 2016-9, To Restate Chapter 11 (Developments Of Countywide Impact), Adopt Regulations For Mineral Resource Extraction And Processing, And Add Definitions To Appendix A**

Santa Fe County Staff has drafted proposed amendments to Chapter 11 - Developments of Countywide Impact (DCIs) of the Sustainable Land Development Code (SLDC) to restate the existing regulations, adopt new regulations for Mineral Resource Extraction and Processing, and add definitions to Appendix A.

BACKGROUND:

Chapter 11 reserves Section 11.14 for Mineral Resource Extraction and Processing. Staff worked with interested stakeholders during an extensive public review process and consulted with outside experts and state regulatory agencies to develop regulations for this type of DCI. During the course of this work, Staff determined that clarifying changes were required to the existing DCI regulations, and that new definitions should be added to Appendix A.

On January 8, 2019, Staff presented a draft of the proposed amendments to the Board, which initiated the public comment period. Public meetings were conducted in the County's four (4) Growth Management Areas during the month of January at the following locations:

- Tuesday, January 22 - Edgewood Fire Station
- Thursday, January 24 - Nancy Rodriguez Community Center
- Monday, January 28 - Turquoise Trail Elementary School
- Thursday, January 31 - Nambe Community Center

Staff incorporated the comments and recommendations of stakeholders as appropriate. Exhibit A.
102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX:
505-995-2740 www.santafecountynm.gov

On March 12, 2019, the Board directed Staff to publish title and general summary of an Ordinance Amending the Sustainable Land Development Code, Ordinance No. 2016-9, To Restate Chapter 11 (Developments of Countywide Impact), Adopt Regulations for Mineral Resource Extraction and Processing, And Add Definitions to Appendix A. On March 21, 2019, the Planning Commission held the first of two (2) public hearings on the proposed amendments. Following the public hearing, the Planning Commission unanimously recommended approval of the proposed amendments with the condition that the Chair's comments be incorporated into the final draft. Exhibit B.

Staff prepared two versions of the proposed amendments. Exhibit C shows the proposed amendments in track change format, which identifies the revisions made to the existing version of Chapter 11. Exhibit D is a clean version, reflecting Staff's final proposed amendments to Chapter 11.

The proposed amendments to Chapter 11 complement state and federal requirements to ensure that the County's residents and environment are protected from the potential adverse effects of mining activities. Specifically, the proposed amendments:

- Protect water resources;
- Ensure that applicants provide adequate financial assurances;
- Require applicants to demonstrate that mining activities will not pose an unacceptable risk to public health or the environment in the short or long term; and
- Ensure consistent treatment of all DCIs during the application process.

REQUESTED ACTION:

Staff requests that the Board, after conducting a public hearing, approve the Ordinance Amending the Sustainable Land Development Code, Ordinance No. 2016-9, To Restate Chapter 11 (Developments of Countywide Impact), Adopt Regulations for Mineral Resource Extraction and Processing, And Add Definitions to Appendix A.

EXHIBITS

Exhibit A: Public Comments Matrix
Exhibit B: Comments of Chair of the Planning Commission
Exhibit C: SLDC Chapter 11 Revisions – Track Change Format
Exhibit D: SLDC Chapter 11 – Proposed Amendments

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2019-_____

**AN ORDINANCE
AMENDING THE SUSTAINABLE LAND DEVELOPMENT CODE, ORDINANCE NO.
2016-9, TO RESTATE CHAPTER 11 (DEVELOPMENTS OF COUNTYWIDE IMPACT),
ADOPT REGULATIONS FOR MINERAL RESOURCE EXTRACTION AND
PROCESSING, AND ADD DEFINITIONS TO APPENDIX A**

BE IT ORDAINED BY THE GOVERNING BODY OF SANTA FE COUNTY:

1. The Board of County Commissioners adopted and restated the Santa Fe County Sustainable Land Development Code ("SLDC") on December 13, 2016, via Ordinance 2016-9.
2. The Board has determined that it is in the public interest to amend Chapter 11 of the SLDC to restate the general requirements for Developments of Countywide Impact, adopt regulations for mineral resource extraction and processing, and add definitions to effectuate those regulations in Appendix A.
3. Chapter 11 of the SLDC is hereby replaced with Exhibit A attached hereto.
4. Appendix A of the SLDC is hereby amended to add the following definitions:
 - a. **Exploration:** The act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work. Exploration does not include activities that cause little or no surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work, or other work that causes no greater disturbance than is caused by ordinary lawful use of the area by persons not engaged in exploration.
 - b. **Mineral:** A non-living commodity that is extracted from the earth for use or conversion into a saleable or usable product, but does not include Sand and Gravel Mining as defined herein, surface water or subsurface water, geo-thermal resources, or oil and natural gas.

- c. **Mineral Resource Extraction and Processing:** The process of obtaining a mineral from the earth's crust or from previously disposed or abandoned mining waste, including open-cut mining and surface operations, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing, but excluding Sand and Gravel Mining as defined herein, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the extraction of geothermal resources.
- d. **Mining:** see "Mineral Resource Extraction and Processing."

5. This effective date of these amendments to the SLDC adopted by this Ordinance shall be thirty (30) after recordation by the County Clerk.

PASSED, APPROVED, AND ADOPTED THIS ____ DAY OF _____, 2019.

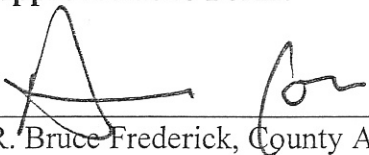
BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

Anna Hamilton, Chair
Board of County Commissioners of Santa Fe County

Attest:

Geraldine Salazar, County Clerk

Approved as to Form:



R. Bruce Frederick, County Attorney



Comment #	Section	Subject	Date Captured	Comment	Staff Analysis	Proposed Action	Applied
1	11	Formatting	1/30/2019	There are some SLDC defined terms that are not capitalized in the draft. These should be capitalized.	Staff has identified specific terms that should be capitalized because they are defined in the SLDC.	Capitalize defined terms.	Capitalized defined terms throughout the document.
2	11.1	Purpose	1/24/2019	No mention of temporal aspect of DCIs. The long-term impact of DCIs should be addressed in the purpose.	11.1 is the purpose section and does not directly address temporal impacts. Section 2.2.6 of the SGMP describes the purpose of DCI regulation including the long-term impacts. Staff has determined that modifying 11.1 to include mention of long-term impacts is appropriate.	Add long-term impacts to 11.1.	Added "long-term" to 11.1
3	11.11	Sand and gravel	1/30/2019	Add a requirement for a closure plan to the sand and gravel section.	This was an oversight that will be addressed.	Draft new section based on hardrock closure requirements 11.14.8	Added 11.11.4.6
4	11.11	sand and gravel	1/30/2019	Does not specify reclamation for small scale sand and gravel.	Small scale sand and gravel is addressed in Chapter 10 of the SLDC.	No action.	No change.
5	11.14	General	1/30/2019	The County amendments duplicate many state requirements of the NM Mining Act and Rules for new units and new mines. As a suggestion, the applicant may benefit from being able to submit the same documents to both the state and county, and supplement with additional information when needed to fulfill more stringent requirements.	This is a good suggestion and will be addressed during the processing of applications.	No action.	No change.
6	11.14	General	1/30/2019	It will require significant expertise and staff to implement these rules. Depending on how many hard rock mining operations the county has to deal with, this could be a strain on resources. Will this group be dedicated specifically to mine permitting?	The County will retain experts to assist in reviewing applications and monitoring compliance.	No action.	No change.

Comment #	Section	Subject	Date Captured	Comment	Staff Analysis	Proposed Action	Applied
7	11.14	General	11/30/2019	The permitting process indicates all costs shall be recovered by the County from the Applicant/Permittee. Does the County have a resource estimate of the time and costs required for reviews, inspections and outside contractors?	The County will estimate these costs after the receipt of an application.	No action.	No change.
8	11.4	DCI definition	1/24/2019	Include high voltage transmission lines as a DCI (issue of transmitting solar energy). Also, airstrips, launch sites, certain industrial operations, outdoor music and festival site, permanent outdoor film studios, power generating sites (geothermal etc.). All such operations have effects listed in 11.1.	The goal of this planning process and resulting regulations is to address DCIs as currently defined in section 2.2.6 of the SGMP and Ch. 11 of the SLDC. If directed by the BCC per 2.2.6.7 of the SGMP, staff will investigate other potential DCIs under a separate process.	No action.	No change.
9	11.4	definitions	1/31/2019	High voltage transmission lines should be defined as a DCI and the process to achieve that should be communicated to those who request it.	See response to Comment #4 above.	No action.	No change.
10	11.4	definitions	1/31/2019	High voltage transmission lines should be addressed as part of the current SLDC amendment process.	See response to Comment #4 above.	No action.	No change.
11	11.8	lighting	1/31/2019	The draft does not address light pollution or light trespassing conditions. This should be addressed in Chapter 11. (See SF Muni. Code for Outdoor Lighting and the IES documents)	Lighting requirements are included in Section 7.8 of the SLDC. These lighting requirements apply to all DCIs.	No action.	No change.

Comment #	Section	Subject	Date Captured	Comment	Staff Analysis	Proposed Action	Applied
12	11.11.4.5; 11.14.2.10.4	blasting	1/30/2019	Both subsections require training, examination and blasting certification from MMD Director at EMNRD. This OSM training is a requirement for coal mining. MMD does not have this requirement for hardrock mines, though the Director can require a blasting plan.	The County intends to require training, permits and plans for both types of DCIs.	No action.	No change.
13	11.14.1.8	Purpose	1/30/2019	Add "associated impacts" to qualify extraction and processing.	This was an oversight that will be addressed.	Add "associated impacts"	Added "all potential costs of impacts associated with mineral resource extraction and processing."
14	11.14.10	Temporary cessation	1/30/2019	This is not reasonable. If ceasing for 24 hours triggers a temporary cessation process then this would happen every weekend. Consider keeping noticing requirement for unexpected cessation greater than 24 hours but changing other requirements to a longer period, perhaps 5 business days.	Staff agrees that this is too restrictive.	Change days of operation to Monday through Saturday (11.14.6.1) and change unplanned cessation period to 5 calendar days (11.14.10).	11.14.10 Replaced "for a period greater than twenty-four (24) consecutive hours" with "for an unplanned period greater than five (5) calendar days." 11.14.6.1 Changed from Friday to Saturday with Board discretion.
15	11.14.2	Applicability	1/30/2019	Include definition of mineral resource extraction.	Agreed. See 19.10.1.7 NMAC for state definitions of mineral and mining.	Add definitions to the appendix. Make list of definitions.	Definitions for Exploration, Mineral, Mineral Resource Extraction and Processing, and Mining added to Appendix A. See 'Appendix Definitions 2.15.19'.
16	11.14.2	applicability	1/30/2019	the requirements may be onerous for a small-time miner, who pans for gold or disturbs less than 5 acres of mining. All applicants would have to create an extensive environmental impact report (subsection 11.7.1.8.1). Might want to change this for small mine operator. Would environmental impact be divided into no significant impact and significant impact?	The County intends to regulate all mineral resource exploration, extraction and processing.	No action.	No change.

Comment #	Section	Subject	Date Captured	Comment	Staff Analysis	Proposed Action	Applied
17	11.14.2.3	exploration	1/30/2019	Current language could restrict mapping and surveying by USGS and others. Remove "of any type" from the end of paragraph.	Agreed. See 19.10.4 NMAC for state exploration applications.	Add definition of exploration to the appendix. Remove "of any type" from the end of paragraph.	Changes to 11.14.2.3 require Board approval of an exploration plan as part of the Overlay processes for mining; Definition of "exploration" added to Appendix.
18	11.14.2.4	uranium	1/30/2019	This section prohibits permits to extract or process uranium minerals or other radioactive material until the County adopts regulations. How might these regulations differ from the current regulations? MMD has a guideline for uranium mine reclamation.	The County will develop regulations for uranium in the future if an application for uranium mining is filed and will take state regulations into consideration in doing so.	No action.	No change.
19	11.14.3	design criteria	1/24/2019	is 1,000 year flood data feasible?	In consultation with our technical experts, it is determined that requiring 1000-yr flood data is feasible. NRC uses 1000-yr flood data in the design of their mining facilities.	No action.	No change.
20	11.14.3	Design Criteria	1/30/2019	Does this apply to operations, closure or both?	This applies to both operations and closure.	No action.	No change.
21	11.14.3.1	design criteria	1/30/2019	Design criteria set standard that mineral processing and extracting shall not cause or contribute to depletion of a water resource or contamination in perpetuity. This would likely exclude mining below the water table or dewatering to mine ore below the water table, for example, and would probably require complete backfilling of pits.	The design criteria is intended to protect the County's water resources. The application of the design criteria to a specific application is not within the scope of this regulation.	No action.	No change.
22	11.14.3.2	Design criteria	1/30/2019	NRC uses the 1000 year standard and it results in very large flood mitigation facilities that are not always effective for day-to-day weather events. Consider 500-year standard.	Staff recognizes that a 1000-year flood design could be ineffective in certain scenarios. The LUA has the authority to allow or require designs that will handle smaller flows while preserving the requirement for a design that will handle larger flows anticipated in a changing climate regime (11.14.6.11.1).	No action.	No change.

Comment #	Section	Subject	Date Captured	Comment	Staff Analysis	Proposed Action	Applied
23	11.14.3.2	1000-yr storm	1/30/2019	1000-yr storm requirement does not indicate the duration. For example MMD uses 100-yr/24 hr. storm. A 200-yr./24 hr. requirement may be more reasonable and more current analysis of climatic conditions would be worthwhile.	Agreed. Staff will indicate a duration.	Add: 24 hr. storm event.	11.14.3.2 Added "on thousand (1,000) year twenty-four (24) hour storm event"
24	11.14.4.16.3	Operating Plan	1/30/2019	Requirement does not make sense if active treatment is prohibited.	This was an oversight that will be addressed.	Remove 11.14.4.16.3	Removed: "3. a description of water treatment processes;"
25	11.14.4.22.2	reclamation	1/18/2019	In some places demonstrable is removed, in some places it is left, and in some places demonstrated is changed to demonstrable. They should be consistent. The qualification requirement is probably adequate because demonstrating the experience doesn't really make sense anyway.	Agreed. Demonstrable is not necessary. The LUA will evaluate expertise as part of the review process.	Remove demonstrable and demonstrated throughout the document.	Removed "demonstrable" and "demonstrated" throughout the document where referencing professional expertise.
26	11.14.4.8.9	Baseline data report	1/30/2019	The Baseline Data Report Requirement for a description of the ore body and mineralized zones may conflict with the NMMA 69-36-10 Confidentiality because operators may designate some exploration map, grade or location of ore reserves as confidential under state law.	To the extent that there is a conflict, the applicant can bring that to the LUA for consideration.	No action.	No change.
27	11.14.4.8	Reclamation	1/22/2019	Does not address removal of slag/ore material/ reclamation without starting a new mine. Need for regulations just for reclamation without new DCI.	Removal of historic mining materials for construction materials is considered a sand and gravel operation. Small scale sand and gravel would apply up to 20thou tons. Beyond that is a DCI. We did not consider the applicability of HRM to this situation of historic mine waste removal. In the future we could consider historic mine waste removal under a different process.	No action.	No change.

Comment #	Section	Subject	Date Captured	Comment	Staff Analysis	Proposed Action	Applied
28	11.14.4.8	Legacy mining	1/30/2019	The no active treatment clause of the design criteria (11.14.3.4) could prohibit treatment of existing sites in need of remediation. There should be an exception to this clause when remediating legacy mines.	We agree that treatment may be required to remediate legacy mines.	Add: "the LUA may allow an applicant to improve or remediate conditions at a legacy mine site to acceptable levels without complying with the active treatment clause of the design criteria (11.14.3.5)"	Add: "The Board may allow an applicant to improve or remediate conditions at a legacy mine site to acceptable levels without complying with the active treatment clause of the design criteria (11.14.3.5). "
29	11.14.6.5	Remediation of Contaminated baseline and legacy uses	1/18/2019	Section on sulfide ore was removed and replaced with section on contaminated baseline and legacy uses. Please explain this change.	This section was removed because it was duplicative and staff determined it would be impractical to implement.	No action.	No change.
30	11.14.6.10	wildlife	1/18/2019	Why is the wildlife provision removed from blasting?	Because wildlife impact mitigation was added as 11.14.4.19. This is a more comprehensive provision and applies to all aspects of the mine, including but not limited to blasting.	No action.	No change.
31	11.14.6.11.2	Contaminated baseline	1/30/2019	Add "as a result of anthropogenic activities" as a qualifier to contaminated baseline conditions.	Agreed. An applicant should not have to restore conditions beyond the natural baseline conditions existing before human activity.	Add: "and to the baseline condition existing before anthropogenic activity."	Added: "or to the baseline condition existing before anthropogenic activity"
32	11.14.6.4	Hazardous materials	1/30/2019	Mine waste is exempted from federal definition of hazardous materials. How does that exemption apply to this section?	To the extent that federal law controls the LUA will conform the permit accordingly. Mine waste is addressed in 11.14.6.7.	No action. Capitalize Hazardous Material throughout the document to reflect that it is defined in the SLDC appendix	Hazardous Materials capitalized throughout the document.
33	11.14.6.7	Storage	1/30/2019	Clean material like soils should be exempted from these storage requirements. Add "that have the potential to generate water contamination" as a qualifier to geological materials.	Agreed. Clean soil stored for the purpose of reclamation should be exempted from these storage requirements.	Add: "that have the potential to generate water contamination except for clean soil stored for the purpose of reclamation"	Added: "that have the potential to generate water contamination except for clean soil stored for the purpose of reclamation"
34	11.14.6.7	facilities for storage	1/30/2019	preferences dry stacked tailings impoundment, double lined electronic grid leak detection system for process solution management ponds, and highwalls backfilled/regraded to 3(H) to 1(V) or flatter. These prescriptive designs may limit the evaluation of other alternatives, which may be beneficial to all parties.	The LUA has the authority to consider changes to these requirements as allowed under 11.14.6.4.11.1.	No action.	No change.